

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

ROBERT BOWERS

Criminal No. 18-292

ORDER

AND NOW, upon due consideration of the United States' Motion to Order Defendant Bowers to Provide Meaningful Notice Pursuant to Federal Rule of Criminal Procedure 12.2 and to Approve the Use of Firewall Counsel,

IT IS HEREBY ORDERED that said motion is GRANTED.

IT IS FURTHER ORDERED:

(1) All testing, examinations, and evaluations of the defendant by any defense mental health expert shall be completed prior to any deadline set by the Court for the defendant to provide notice of his intent to rely upon mental health evidence at the guilt- or penalty- phase pursuant to Federal Rule of Criminal Procedure 12.2;

(2) The contents of the defendant's Rule 12.2 notice shall include the following:

A) With respect to notice of defendant's intent to present an insanity defense or other evidence of a relevant mental condition during the guilt-phase, the defendant shall provide notice to the prosecution team, pursuant to Fed. R. Crim. P. 12.2(a) and (b)(1), and file under seal with the Court, notice setting forth: (i) the name of each mental health expert who the defendant will rely upon, including those who reviewed records and/or testing results but did not personally examine the defendant; (ii) each expert's qualifications; (iii) a list of the specific tests administered to the defendant by each expert, including any tests not personally administered by the testifying

expert, but upon which the expert will rely; and (iv) a written summary of any anticipated expert witness testimony that describes the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

Within 30 days of providing to the United States the defendant's guilt-phase Rule 12.2 notice, the defendant shall provide to the United States, and shall file under seal with the Court, the results or reports of any mental examination or scientific test or experiment he intends to use in his case-in-chief, and the reports of any experts who he intends to call to testify, including the experts' raw data. Fed. R. Crim. P. 16(b)(1)(B).

(B) With respect to notice of defendant's intent to present penalty-phase mental health evidence, the defendant's Rule 12.2(b)(2) notice, which shall be filed under seal with the Court and provided to the prosecution team, shall set forth the following: (i) the name of each mental health expert who the defendant will rely upon, including those who reviewed records and/or testing results but did not personally examine the defendant; (ii) each expert's qualifications; and (iii) a list of the specific tests administered to the defendant by each expert, including any tests not personally administered by the testifying expert, but upon which the expert will rely.

(3) In order to facilitate the goal of full, fair, and efficient discovery pertaining to any penalty-phase mental health evidence, the Court hereby approves the use of government firewall counsel, which will protect the defendant's rights while enabling the United States to timely respond to defense mental health evidence. Within seven (7) days from the date of this Order, the United States shall file with the Court the name, address, and capital-litigation experience of an AUSA from another district who is prepared to serve as firewall counsel in this prosecution.

(4) Within the 21 days of the date of this Order, the parties shall meet and confer, and submit a joint statement setting forth points of agreement and disagreement related to Rule 12.2 penalty-phase mental health procedures. Each party likewise shall file with the Court a brief that specifically addresses any points of disagreement, including, if applicable, the mechanics and parameters of the United States' examination of the defendant, the appropriate timing of the exchange of penalty-phase mental health discovery, and other post-guilty verdict procedures.

IT IS SO ORDERED.

Honorable Donetta Ambrose
United States District Judge

Date